



DEPARTMENT OF EDUCATION

Report to Congress Identifying all Federal Financial Assistance Programs for Infrastructure Administered by the Department of Education

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) publishes a report to Congress, dated March 2022, identifying its Federal financial assistance programs (programs) that allow for grant funds to be used for infrastructure projects, and that also identifies those programs that are inconsistent with the Infrastructure Investment and Jobs Act (i.e., they do not require that all of the iron, steel, manufactured products, and construction materials used in the project be produced in the United States; do not issue waivers to this requirement; or are subject to waivers of general applicability).

FOR FURTHER INFORMATION CONTACT: Phillip Juengst, U.S. Department of Education, Office of Acquisition and Grants Administration, 400 Maryland Avenue, SW, room 5B242, Washington, DC 20202. Telephone: (202) 453-6396. Email: Phillip.Juengst@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department publishes this notice containing a report to Congress, dated March 2022, identifying its programs that allow for grant funds to be used for infrastructure projects, and that also identifies those programs that are inconsistent with section 70914 of the Infrastructure Investment and Jobs Act (i.e., they do not require that all of the iron, steel, manufactured products, and construction materials used in the project be produced in the United States; do not issue waivers to this requirement; or are subject to waivers of general applicability). The report to Congress is in the Appendix of this notice.

Accessible Format: On request to the contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Denise L. Carter,

Acting Assistant Secretary, Office of Finance and Operations, and Delegated to Perform the Functions and Duties of the Chief Financial Officer.

Appendix - Report to Congress Identifying all Federal Financial Assistance Programs for Infrastructure Administered by the Department of Education

March 2022

Preface

The *Report to Congress Identifying all Federal Financial Assistance Programs for Infrastructure Administered by the U.S. Department of Education* identifies the Department of Education's (Department's) Federal financial assistance programs (programs) that allow for grant funds to be used for infrastructure projects, and identifies those programs that are inconsistent with section 70914 of the [Infrastructure Investment and Jobs Act Pub. L. 117-58](#) (that is, they do not require that all of the iron, steel, manufactured products, and construction materials used in the project be produced in the United States; do not issue waivers to this requirement; or are subject to waivers of general applicability).

The report consists of a Summary section that addresses whether the Department's programs identified in the report include domestic content procurement preferences and provides details on any applicable domestic content procurement preference. The Summary section also addresses whether programs have waiver provisions to these preferences in place or are subject to waivers of general applicability. The report also includes Exhibits listing the Department programs that allow for grant funds to be used for infrastructure projects. The Exhibits include the Department's program office names, the program titles, the Assistance Listing Numbers (ALNs); the award types; and the type of infrastructure activity permitted under the programs (that is, construction and/or broadband infrastructure activities).

Section I. Summary

This report is submitted in accordance with section 70913 of the [Infrastructure Investment and Jobs Act Pub. L. 117-58](#) (the Act or IIJA), which requires Federal agencies to submit to Congress and the Office of Management and Budget (OMB), and publish in the Federal Register, a report listing all Federal financial assistance programs for infrastructure administered by Federal agencies. The report must identify those programs that do not have an established domestic content procurement preference for which Federal financial assistance may not be obligated unless: 1) all iron and steel used in the project will be produced in the United States; 2) the manufactured products used in the project will be produced in the United States; or 3) the construction materials used in the project will be produced in the United States. These requirements are

defined and established in sections 70912(2) and 70914 of the Act. Additionally, the report must identify which of those programs that have established domestic content procurement preferences in place also allow waivers to these preferences or allow for waivers of general applicability to be issued (see section 70914(b)(c) and (d) of the Act).

The Department's financial assistance programs provide services from early intervention services to employment training programs. Many of these programs provide grants to states or local educational agencies and support students and families from vulnerable populations, including children with disabilities and those from disadvantaged backgrounds. These programs also provide grants and loans to postsecondary students and facilitate research that examines ways that states, schools, districts, and postsecondary institutions can improve America's education system. Generally, grants under these programs do not engage in infrastructure; specifically, they do not acquire real property or engage in construction activities, in accordance with prohibitions in the Education Department General Administrative Regulations sections [75.533](#) and [76.533](#).

Although these programs are generally not focused on funding infrastructure, a number of the Department's programs do authorize infrastructure projects in their statutes or regulations. Three Department program offices, the Office of Elementary and Secondary Education (OESE), the Office of Postsecondary Education (OPE), and the Office of Special Education and Rehabilitative Services (OSERS), administer programs that could allow for infrastructure projects primarily in accordance with subparagraph (K) of the "infrastructure" definition established in section 70912(5) of the Act. A smaller number of programs allow infrastructure projects under subparagraph (J). A total of 38 programs are identified within this report. Section 70912(5) of the Act provides that:

- (5) INFRASTRUCTURE. The term "infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States –
- (A) roads, highways, and bridges;
 - (B) public transportation;
 - (C) dams, ports, harbors, and other maritime facilities;
 - (D) intercity passenger and freight railroads;
 - (E) freight and intermodal facilities;
 - (F) airports;
 - (G) water -systems, including drinking water and wastewater systems;
 - (H) electrical transmission facilities and systems;
 - (I) utilities;

- (J) broadband infrastructure; and
- (K) buildings and real property.

While the identified programs may be considered infrastructure programs in accordance with subparagraphs (J) and (K) of this definition, generally their focus is not primarily infrastructure. Most projects awarded Federal financial assistance under these programs focus on other allowable and required activities and do not engage in infrastructure activities.

Although the identified programs do not have domestic content procurement preferences established in program statute and regulations, and thus do not provide for waivers of such requirements, the Department supports the administration's efforts of strengthening the use of Federal financial assistance to support American manufacturing by ensuring that the following as established in [2 CFR 200.322](#) is applicable to projects funded under the identified programs:

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

- (b) For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

By referencing [2 CFR 200.322](#) within the Grant Award Notifications it issues to grantees under these programs, the Department requires compliance with [2 CFR 200.322](#).

This report reflects the Department's initial analysis of programs and associated Buy America requirements. After OMB develops and releases implementation guidance subject to section 70915 of the Act, the Department will work closely with OMB to ensure that appropriate agency programs that are subject to Build America, Buy America requirements are administered with those requirements in place. This initial analysis is based on the Department's current understanding of information contained in the law and information received to date from OMB regarding the implementation of IIJA section 70915. The Department's intention was to be inclusive of all programs that could potentially fall under these requirements, but this initial analysis is subject to change upon further evaluation by the Department and new guidance from OMB.

Section II. Exhibits

For each reported program, the Exhibits that follow identify the program office names, the program titles, the ALNs, the award types; and the type of infrastructure activity permitted under the programs (that is, construction and/or broadband infrastructure activities).

Exhibit 1 - OESE

Program Title	ALN	Award Type
Impact Aid Program, Discretionary Construction Program	84.041C	Discretionary
Per Pupil Facilities Program	84.282D	Discretionary
Charter Schools Program Grants for Credit Enhancement for Charter School Facilities	84.354A	Discretionary
Alaska Native Education	84.356A	Discretionary
Education of Native Hawaiians	84.362A	Discretionary
Education Stabilization Fund Allocation for Outlying Areas	84.425A	Formula
Governors Emergency Education Relief Fund	84.425C	Formula
Elementary and Secondary School Emergency Relief Fund	84.425D	Formula
Governors Education Stabilization Fund Allocation for Outlying Areas	84.425H	Formula
American Rescue Plan - Elementary and Secondary Schools Emergency Relief Fund (ARP-ESSER)	84.425U	Formula
American Rescue Plan - Outlying Areas SEA (ARP-OA SEA)	84.425X	Formula

Exhibit 2 - OPE

Program Title	ALN	Award Type
Strengthening Institutions Program (SIP)	84.031A	Discretionary
Historically Black Colleges and Universities Program	84.031B	Discretionary
American Indian Tribally Controlled Colleges and Universities (Part F)	84.031D	Discretionary
Historically Black Colleges and Universities Program (FUTURE Act)	84.031E	Discretionary
Strengthening Institutions Program (SIP)	84.031F	Discretionary
Strengthening Historically Black Graduate Institutions Program	84.031K	Discretionary
Promoting Postbaccalaureate Opportunities for Hispanic Americans Program	84.031M	Discretionary
Predominantly Black Institutions Program - Formula Grants	84.031P	Discretionary
Developing Hispanic-Serving Institutions Program	84.031S	Discretionary
American Indian Tribally Controlled Colleges and Universities	84.031T	Discretionary
Asian American and Native American Pacific Islander-Serving Institutions Program	84.382B	Discretionary
Historically Black Colleges and Universities (Graduate)	84.382G	Discretionary
Howard University (Academic)	84.915A	Formula
Howard University (Hospital)	84.915B	Formula

Exhibit 3 - OSERS

Program Title	ALN	Award Type
State Grants - B (611)	84.027A	Formula
Individuals with Disabilities Education Act/American Rescue Plan Act of 2021 (ARP)	84.027X	Formula
State Vocational Rehabilitation Services (VR)	84.126A	Formula
STATE GRANT - B PRESCHOOL (619)	84.173A	Formula
Individuals with Disabilities Education Act/American Rescue Plan Act of 2021 (ARP)	84.173X	Formula
INFANT & TODDLERS/FAMILIES (PART C)	84.181A	Formula
Individuals with Disabilities Education Act/American Rescue Plan Act of 2021 (ARP)	84.181X	Formula
Helen Keller National Center	84.904A	Discretionary
National Technical Institute for the Deaf (NTID)	84.908A	Formula
NTID Endowment Program	84.908B	Formula
NTID COVID	84.908D	Formula
Gallaudet University	84.910A	Formula
Gallaudet COVID Relief	84.910B	Formula

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to promote student
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